IN THE HIGH COURT OF DELHI

Bail Appl.No.2506/2006

Naresh Kumar ..... Appellant
! through: Mr.Davender N.Grover, Advocate.

VERSUS

$ State (NCT of Delhi) ..... Respondents
^ through: Mr.Anil Soni, Advocate for the State.
Mr.Subrat Birla, Advocate for the complainant

Bail Appl.No.2718/2006

Kamal Bhola ..... Appellant
! through: Mr.Rajiv Nanda, Advocate.

VERSUS

$ State (NCT of Delhi) ..... Respondents
^ through: Mr.Anil Soni, Advocate for the State.
Mr.Subrat Birla, Advocate for the complainant

% DATE OF DECISION: *23.08*.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**

FIR No.755/04 Dated : 30.12.2004
U/S 406/409/420/120 IPC
P.S. Model Town

1. Petitioner, Naresh Kumar, is in judicial custody since 5.5.2006. Petitioner, Kamal Bhola, is in judicial custody since

10.7.2006. Both are accused in the FIR above noted.

2. There is a third co-accused Jyoti Gupta.

3. On 28.5.2007 charges have been framed against the petitioners as also Ms.Jyoti Gupta.

4. The charge framed against Kamal Bhola read as under :-

"CHARGE

I, Sanjeev Jain, ACMM, Delhi do hereby charge you accused Kamal Bhola, S/o Sh.M.K.Bhola as under :

That you in the month of June,2004 agreed that Naresh Shah and Jyoti Gupta to do an illegal act i.e. to cheat complainant Raj Kr. Maheshwari and Mahender Soni and other innocent person and thus you have committed an offence punishment u/s 120 B of IPC.

Secondly, in pursuance of abovesaid criminal conspiracy in the month of June,2004 you along with your above said associate cheated complainant Raj Kr.Maheshwari and Mahender Soni and other innocent person by dishonestly inducing them to deliver the diamonds and jewellery worth Rs.90 lacs belonging to complainant and diamonds and jewellery of other innocent persons public victims to you and thus you have committed an offence punishable U.S.420 IPC R/w Sec.120 B of IPC and is within my jurisdiction and cognizance.

And I hereby direct you to be tried on the above said charge by this court."

5. Similar charge has been framed against Naresh Kumar.

6. Thus, at the outset, it may be noted that Kamal Bhola and Naresh Kumar have not been charged with the offence under Section 406 IPC.

7. Before considering whether circumstances exist to release the petitioners on bail, I may note that Jyoti Gupta, the third co-accused, was granted bail by this court on 28.8.2006. The order reads as under :-

> "Present : Mr.Ramesh Gupta with Mr.Mukesh Kalia for the petitioner.
> Mr.Pawan Sharma for the State.
>
> Bail Appl.1601/2006
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> Learned counsel for the petitioner has argued that though in the FIR lodged against the petitioner and other accused persons number of provision of the Indian Penal Code were included, ultimately after the investigation charge-sheet, which has already been filed, mentions offence under Section 420 read with Section 120-B IPC. He has also placed copy of the order on charge passed by the learned ACMM on 2.6.2006 as per which, charge is framed only under the aforesaid provision. In this charge it is, inter alia, stated that the applicant conspired with the other co-accused Naresh Kumar and Kamal Bhola and cheated the complainant Raj Kumar Maheshwari by dishonestly inducing him to deliver the diamond and jewellery worth Rs.90 lacs. Submission of the learned counsel for the petitioner is that since the charge has already been framed and the petitioner, who is a lady, is in judicial custody since 22.12.2005 and during this period she was released on interim bail for a period of one month only and as even during the pre-trial period she has been in custody for more that 71/2 months, she should be enlarged on bail. In support of this submission the learned counsel for the petitioner has relied upon the judgments of this court in the case of Anil Mahajan V. Commissioner of Customs and Anr., 2000 (2) JCC (Delhi) 302 and of Supreme Court in the case of Ashok Dingra V. NCT of Delhi, 2000 Crl.L.J. 4054. He also relies upon unreported order dated 19.5.2006 passed in Bail Appl. No.3033/2005 by this court. On the basis of the aforesaid judgments he has argued that since the offence under Section 420 IPC is

punishable with a maximum punishment of 7 years and fine and as the petitioner is in judicial custody for more than 17½ months, these are sufficient reasons for the petitioner to be enlarged on bail.

Learned counsel for the State has opposed the aforesaid prayer by submitting that in similar circumstances the Supreme Court in the case of Mahesh Kumar Bhawsinghka V. State of Delhi, 2000 Crl.L.J. 2786 has refused the bail. He also relied upon the order and judgment dated 17.12.2004 passed by this court in Bail Appl. No.1847/2004 and order passed in Crl.M(M) No.343/2002 entitled Mukesh Singh V. State. It cannot be disputed that each case has to be considered on its own merits. In this case, the petitioner is in judicial custody for the last 17½ months. Investigation is complete and even charge-sheet has been filed and charge framed against her. In almost identical circumstances, the Supreme Court in the case of Ashok Dhingra V. NCT of Delhi (supra) released the accused persons on bail even when it observed that prima facie circumstances did not entitle accused to be released on bail and the governing consideration was that the accused was in custody for six months and the court observed that to continue to detain him during the pre-trial stage may not be in the interest of justice. The case of Mukesh Singh V. State (supra) relied upon by the learned counsel for the State where the bail was denied, was one where the accused was facing prosecution for offence under Section 120-B/468/477-A IPC.

Having regard to the aforesaid reasons, I am of the opinion that the petitioner is entitled to bail. The petitioner shall be released on bail subject to her furnishing personal bond in the sum of Rs.1,00,000/- (Rupees one lakh only) with one surety of the like amount to the satisfaction of the learned Trial Court/Duty Magistrate. The petitioner will not leave the limit of the National Capital Territory of Delhi without permission of the Trial Court. She will also not, in any manner, either intimidate or influence the witnesses or tamper with the evidence.

The application is disposed of."

8. Vide order dated 7.5.2007 disposing of Criminal Appeal No.699/2007, Hon'ble Supreme Court has cancelled the bail granted to Jyoti Gupta.

9. The order dated 7.5.2007 passed by the Hon'ble Supreme Court reads as under :

> "Leave granted.
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> The challenge in this appeal is to the order dated 28.8.2006 passed by the High Court granting bail to the respondent-accused subject to her furbishing personal bond in the sum of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the Trial Court.
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> The respondent along with others is an accused under Section 420 read with 120-B IPC. The amount involved in this case is Rs.1,30,00,000/-. We have gone through the impugned order passed by the High Court and no reason has been assigned in the order as to why the bail should be granted in such a serious nature of offence.
>
> It is settled law that while granting bail in non-bailable offence the primary consideration is the gravity and the nature of the offence. It appears that the High Court has not at all considered the gravity and nature of the offence while granting bail to the respondent-accused.
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> For the reasons aforesaid, we set aside the order of the High Court granting bail to the respondent- accused. The bail bond and surety of the respondent-accused stand cancelled. The respondent, Smt.Jyoti Gupta shall be taken back into custody forthwith.
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> The appeal is allowed. Trial may be expedited."

10. Learned counsel for the complainant and the State submitted that since Hon'ble Supreme Court has cancelled the bail granted to Jyoti, petitions filed by the co-accused deserve to

be dismissed without any further consideration.

11. In my opinion, role assigned to the various co-accused and whether at all there is sufficient material to indict the petitioners for conspiring with Jyoti needs to be considered.

12. I proceed with a reference to the FIR. Complainant Raj Kumar Maheshwari has informed the police in a written complaint that he was in the business of sale and purchase of diamonds and Jyoti Gupta was his neighbour. That he knew her since many days. That in the month of June 2004, Jyoti along with the petitioners came to his house and introduced the petitioners as diamond merchants having good reputation in the market. That he i.e. complainant was interested in financial dealing with the accused. When he asked Jyoti as to what would be the financial terms of the business, Jyoti informed him that as he knew her for so many days, it was her responsibility to ensure that he gets good deal. That she undertook to be responsible to secure his payments. That on 20.6.2004 Jyoti placed an order on him and took diamonds worth Rs.90/- lacs from him. Her servant Suresh Soni collected the diamonds from him. She issued two cheques No.316030 and 316031 dated 9.10.2004 and 11.10.2004 each in the sum of Rs.5 lacs. That when presented the cheques were dishonoured by Jyoti's bank. That when he contacted Jyoti, she told him not to worry. That he wanted an assurance from the petitioners that his money was safe. That Jyoti took him to the residence of petitioner, Naresh Kumar, who assured him not

to worry. That as his payment was not forthcoming, he had no option but to lodge the complaint.

13. From a bare perusal of the FIR, it stands out that Jyoti was known to the complainant. That the complainant handed over the diamonds, if at all, to Jyoti. That Jyoti had assured the complainant that he would get good money for his diamonds. Qua petitioners it is stated that Jyoti introduced the complainant to the petitioners and that the petitioners assured him that being in jewellery business they would be in a position to sell the diamonds at a good price. It is further relevant to note that as per the complaint, it was Jyoti who tendered part payment to the complainant.

14. I note that Suresh Soni servant of Jyoti has been examined as PW-1 on 7.7.2007. He stated that he was employed by Jyoti Gupta to collect and deliver jewellery as per her instructions from and to her customers. That Jyoti used to talk to the seller and buyer on phone and accordingly used to instruct him. That after collecting the jewellery he used to hand over the same to Jyoti. He stated that Jyoti used to put tags mentioning the price of the jewellery. He further stated that as instructed by Jyoti he collected jewellery articles on different dates from Raj Kumar Maheshwari and as and when he received jewellery articles, he used to sign cash memos. He stated that at the asking of Jyoti Gupta, he delivered certain jewellery articles to Kamal Bhola. That he visited the premises of

Kamal Bhola around 40 to 50 times. Sometimes he would deliver jewellery to Kamal Bhola and sometimes he user to collect jewellery from Kamal Bhola.

15. It is pertinent to note that PW-1, in his examination-in-chief, has not indicted much less named Naresh Kumar as the person to whom he ever delivered or from whom he ever received any jewellery on behalf of Jyoti Gupta.

16. Admittedly, a criminal complaint of cheating has been filed under the signatures of Suresh Soni. When Suresh Soni who appeared as PW-1 was cross-examined by counsel for Naresh Kumar on the issue of his complaint against Naresh Kumar, Suresh Soni stated that Jyoti had obtained his signatures on the complaint without permitting him to read contents thereof. He stated that Jyoti told him that some jewellery had been struck up with Naresh Kumar and thus a complaint had to be filed.

17. No recovery has been effected from Naresh Kumar. There is no material with the prosecution evidencing any transaction between Naresh Kumar and Jyoti.

18. The star witness of the prosecution PW-1, servant of Jyoti, has referred to the dealings between Jyoti and Kamal Bhola as also between Jyoti and the complainant but has referred no dealings with Naresh Kumar. He has categorically deposed that Jyoti used to send him to deliver or collect jewellery. He has not named Naresh as the person to whom he delivered any diamonds or jewellery.

19. Thus, circumstances exist to release Naresh Kumar on bail.

20. Pertaining to Kamal Bhola it would be relevant to note that his dealings with Jyoti as a jeweller are an admitted fact. The dealings are evidenced by vouchers and receipts etc. In other words, Kamal Bhola does not have a wheeler dealer dealing with Jyoti.

21. The complainant is a diamond merchant. It sounds strange that he would deal with a fellow jeweler through a inter-mediator who has no business place where-from she conducts her business.

22. As noted above, as per the complaint, the complainant dealt with Jyoti and delivered diamonds to Jyoti and received cheques towards part payment from her.

23. Whereas involvement of Jyoti surfaces with greater force, that of Kamal Bhola surfaced on a shaky footing. Conduct of the complainant is not in consonance with the conduct of a diamond trader who buys and sells diamonds in lacs of rupees.

24. In my opinion, circumstances exist to also release Kamal Bhola on bail.

25. Before concluding I may note that the complainant and the prosecution mis-represented before the Supreme Court when bail granted by this court to Jyoti was cancelled. Mis-representation being that diamonds worth Rs.1.3 crores were mis-appropriated.

26. As per the complaint, diamonds worth Rs.90 lacs are alleged to have been handed over by the complainant to Jyoti.

27. I have referred to the order framing charge. It clearly refers to the diamonds entrusted by the complainant to Jyoti. There is no charge of cheating any other person.

28. I am so noting for the reason, the prosecution is attempting to introduce another witness, namely, Mahender Soni, who claims to be lured by Jyoti and states that he handed over diamonds worth nearly Rs.42 lacs to her.

29. I note that Mahender Soni has been examined as PW-4 and has made statements pertaining to entrustment of jewellery by him to Jyoti in the sum of Rs.42/- lacs.

30. If Mahender Soni has made any complaint to the police, said complaint has to form subject matter of an independent inquiry for the reason, there is no charge framed against the petitioners and Jyoti that in furtherance of a criminal conspiracy they have cheated Mahender Soni.

31. Petition stands disposed of admitting the petitioners to bail.

32. I note that since 28.11.2006 petitioners on an interim bail.

33. I thus direct the learned Trial Judge to receive personal bonds by the petitioners in sum, of Rs.1,00,000/- each with one surety in the like amount to the satisfaction of the learned Trial Judge while admitting the petitioners to regular bail.

34. No costs.

35. Dasti under the Signatures of Court Master.

August 23, 2007 **PRADEEP NANDRAJOG, J.**
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